

Ram Kumar Vs. Smt. Sarti Devi and ors.

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Court : Madhya Pradesh

Decided On : Oct-29-1975

Reported in : AIR1977MP110

Judge : Shiv Dayal, C.J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 13(6); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 105 and 115

Appeal No. : Civil Revn. No. 523 of 1975

Appellant : Ram Kumar

Respondent : Smt. Sarti Devi and ors.

Advocate for Def. : Ravish Agarwal, Adv.

Advocate for Pet/Ap. : R.P. Agarwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Shiv Dayal, C.J.

1. In this revision, the, defendant is aggrieved by an order wherebyhis defence has been struck out underSection 13 (6) of the M. P. AccommodationControl Act, 1961.

2. It appears that the writ of summons was served on the defendant on November 11. 1973. Written statement was filed on July 16, 1974. In between these dates, time was taken or some other steps were resorted to. On September 20, 1974, the plaintiff applied for striking out the defence. On December 30, 1974, the defendant replied to the plaintiff's application and also prayed that provisional rent be fixed under Section 13 (2), as there was a dispute under Sub-sections (2) and (3) of Section 13 of the Act. According to the defendant, not the plaintiff but her husband is his landlord. Moreover, while the plaintiff claimed the monthly rent to be Rs. 100 according to the defendant, it was only Rs. 50.

3. By his order dated February 17, 1975, the trial Court fixed provisional rent at Rs. 100 and, at the same time, directed that the amount deposited shall not be withdrawn, unless the question as to whose tenant the defendant is, is determined in the suit. In the same order, the Court allowed the defendant time upto March 3, 1975,

to deposit all arrears.

4. On the last mentioned date, the defendant made an application for extension of time by one month on the ground that he desired to file a revision in the High Court from the order dated February 17, 1973, and the certified copy was supplied to him only on March 1, 1975. The trial Court accepted the request and fixed March 31, 1975. However, on that date, the defendant neither deposited the amount, nor produced any stay order, but applied for further extension of time to enable him to file a revision to the High Court, stating that he had already sent the papers to his counsel.

5. Learned counsel for the petitioner emphatically relying on the decisions in *Chitrakumar Tiwari v. Gangaram*, 1966 Jab LJ 1028; *Jagdish Kapoor v. New Education Society*, 1967 Jab LJ 859 = (AIR 1968 Madh Pra 1) (FB) and *Bachchoobhai v. Premanand*, C. R. No. 993 of 1974, D/- 21-7-1975= (reported in AIR 1976 Madh Pra 8), contended that defence could be struck out only as a last resort and it is an extreme step which shuts the defendant from defending his case. It is also argued that heavens would not have fallen, if the trial Court had granted some more time for depositing rent.

6. Learned counsel further mentions that he has deposited in this Court, during the pendency of this revision, Rupees 5800 to show his bona fides.

7. Shri Ravish Agrawal, learned counsel for the plaintiff on the other hand, starts with the entire history of the case in his endeavour to show that the defendant has been harassing the plaintiff and had never any intention to deposit the arrears of rent. He went to the extent of denying that he is the tenant of the plaintiff. Learned counsel strenuously urges that where the trial Court has discretion to grant time or not to grant time, this Court cannot interfere in exercise of its revisional powers and substitute its discretion.

8. It is undoubted law that there are two remedies open to the defendant whose defence is struck out under Section 13 (6) of the Act One is that he can come up in revision, and the other is that he can raise the objection under Section 105, C.P.C. in the appellate Court. The two remedies are different in their scope. A revision lies only on the question of jurisdiction, i.e., it must be shown that in exercise of its jurisdiction, the trial Court acted with illegality or with material irregularity, which means, either any contravention of some law, or in violation of the prescribed procedure. The jurisdiction of this Court is a limited one.

9. No interference can be made under Section 115 C.P.C. merely on the ground that, the discretion should have been exercised in another way.

10. In *Hari Shanker v. Girdhari Lal*, 1962 Supp (1) SCR 933 = AIR 19-63 SC 698 then Lordships have succinctly pointed out the distinction between appellate and revisional powers. The right of appeal carries with it a right of rehearing on law as well as on facts. The power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law and under Section 115, C. P. C, the High Court has to see whether in the case decided, there has been an assumption of jurisdiction, where none existed, or a refusal of jurisdiction, where it did or there has been material, irregularity or illegality in the exercise of that jurisdiction.

11. Having regard to the facts and circumstances narrated above, it cannot be said that the trial Court committed any error of jurisdiction within the meaning of Section 115, C.P.C., when, after having given two opportunities, it exercised its discretion in striking out the defence. But it will be a different matter, if the appellate Court is persuaded to see whether the discretion was properly exercised and whether in the facts and circumstances of the case, a further opportunity ought to have been granted to the defendant to deposit the arrears of rent. To obtain that relief, the defendant may, if so advised, re-agitate the question under Section 105, C.P.C., in the appellate Court.

12. With these observations, this revision is dismissed. Parties shall bear their own costs.

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